

SERVICE DATE – FEBRUARY 3, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34064

WACCAMAW COAST LINE RAILROAD—MODIFIED RAIL CERTIFICATE

Digest:<sup>1</sup> Horry County, S.C., requests that the Board terminate the modified certificate issued to Waccamaw Coast Line Railroad. Subsequently, the railroad filed notice of its intent to terminate service over the line. Therefore, Board action is unnecessary and Horry County's request will be denied as moot. This decision also denies BP Amoco's request to intervene in this proceeding.

Decided: January 31, 2014

By notice served and published in the Federal Register on July 13, 2001 (66 Fed. Reg. 36831), the Waccamaw Coast Line Railroad (WCLR), a division of the Baltimore and Annapolis Railroad Company (BAR), obtained a modified certificate of public convenience and necessity under 49 C.F.R. § 1150, Subpart C—Modified Certificate of Public Convenience and Necessity, to operate approximately 14.1 miles of rail line owned by Horry County, S.C. (the County), between the connection with BAR, d/b/a The Carolina Southern Railroad Company (CALA), at milepost 336.18 in the City of Conway, S.C., and the end of track at milepost 350.17 in the City of Myrtle Beach, S.C. (the Line).

*Request to Vacate.* Under 49 C.F.R. § 1150.24, the duration of service under a modified rail certificate may be determined in the contract between the State<sup>2</sup> and the rail operator, and the operator may terminate service after providing 60 days' notice to the State, the Board, and all persons that have used the line within the preceding six months. No affirmative Board approval is required before the operator may terminate service.

On August 27, 2013, the County filed a request that the Board vacate WCLR's modified rail certificate. The County states that the lease agreement with BAR has been terminated and that WCLR has not provided rail service over the Line under the modified certificate in more than two years. On September 24, 2013, BAR replied, noting that it "does not wish to resume an obligation or legal relationship with the County," and on December 11, 2013, WCLR filed its 60-day notice to terminate rail service over the Line. As WCLR is voluntarily terminating service

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> Under 49 C.F.R. § 1150.21, "State" includes States, political subdivisions of States, and all instrumentalities through which the State can act.

over the Line, there is no longer a need for the Board to consider vacating the modified certificate, and the County's request will be denied as moot.

*Petition to Intervene.* On September 12, 2013, BP Amoco Chemical Company (BP) filed a petition for leave to intervene in support of the County. BP states that it has relied on CALA for storage of 17 covered hopper cars leased by BP. BP alleges that, despite its requests, CALA has not cooperated with BP to move the cars to a location where they could be removed due to the inoperable conditions of certain CALA lines. BP requests that the Board: (1) find that CALA is in breach of its agreement with BP to store BP's rail cars but to return them promptly to BP upon request; (2) find that CALA is in default under its lease agreement with the County; and (3) grant the County's request to terminate the modified certificate on the condition that the Board require the County to find a substitute rail carrier to obtain Board authority to operate the lines at issue and restore rail service, including rail car storage, as needed. BP alternatively requests that, if the Board does not terminate the carrier's operating authority, it should require the carrier either to return BP's cars or allow BP to remove its cars at the carrier's expense.

Because the railroad has issued its 60-day notice to terminate rail service on the Line, no case or controversy remains regarding continuation of the modified certificate. With respect to BP's petition to intervene here, BP expressed similar concerns regarding its 17 covered hopper cars in its petition to intervene in Docket No. NOR 42138. BP's petition to intervene in that proceeding was granted. See Horry Cnty., S.C. v. Balt. & Annapolis R.R., NOR 42138 (STB served Nov. 25, 2013) (noting that BP's claims in its petition to intervene would be addressed in a final decision on the merits). By letter dated January 21, 2014, BAR has clarified that BP's 17 covered hopper cars are not located on the Line in this docket, but rather are in Chadbourn, N.C., on CALA's line that connects to the Line at Conway, S.C. Because BP's cars are not located on the Line, the issues raised by BP are not relevant here, and allowing BP to intervene in this docket thus would unduly broaden the issues raised in this proceeding. See 49 C.F.R. § 1112.4. Therefore, BP's petition to intervene here will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The County's request to vacate WCLR's modified certificate is denied as moot.
2. BP's petition to intervene is denied.
3. This decision is effective on the date of service.

By the Board, Chairman Elliott and Vice Chairman Begeman.